Filed 3/15/10 Leavitt v. Perez CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MICHAEL LEAVITT, Plaintiff and Appellant, v. DIANE PEREZ, Defendant and Respondent.	E047456 (Super.Ct.No. RIC492873) O P I N I O N

APPEAL from the Superior Court of Riverside County. Sharon J. Waters, Judge. Affirmed.

Michael Leavitt, in pro. per.; Kodam & Associates, Daniel Kodam and Nicole A. Silveira for Plaintiff and Appellant.

Declues, Burkett & Thompson, Jeffrey P. Thompson and Gregory A. Wille for Defendant and Respondent.

I. INTRODUCTION

This is an appeal by plaintiff and appellant Michael Leavitt from a judgment entered in favor of defendant and respondent Diane Perez, following the trial court's order striking Leavitt's two causes of action against Perez for, respectively, defamation and invasion of privacy, under Code of Civil Procedure section 425.16,[1] the statute prohibiting strategic lawsuits against public participation, or anti-SLAPP statute. We affirm.

Leavitt was employed by the San Jacinto Unified School District (the District) for 27 years, until November 2007. Perez was the assistant superintendent of personnel services for the District, and provided Leavitt with various documents prior to his termination. Leavitt's claims against Perez were based on a single statement she made to him, in her office on October 25, 2007, that he was being placed on unpaid administrative leave effective November 1. Leavitt claimed Perez made the statement in the presence of one other person and that it was slanderous per se because it tended to injure him in his work or profession.[2]

At the time Perez made the statement on October 25, Leavitt had been on paid administrative leave for several months and the District had recently notified him it was considering whether to recommend his termination based on complaints by other District

---

[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[2] In the same complaint, Leavitt sued the District for wrongful termination, among other causes of action. The District is not a party to this appeal.

employees that he had made inappropriate sexual remarks and had engaged in inappropriate sexual conduct. Following a *Skelly*[3] hearing, the District recommended that Leavitt be terminated and he was terminated effective November 14.

On this appeal, Leavitt contends the anti-SLAPP motion was erroneously granted in favor of Perez, because her statement that he was being placed on unpaid administrative leave did not concern a public issue or matter of public interest, and he demonstrated a reasonable probability he would prevail on his defamation and invasion of privacy claims. On independent review, we conclude the October 25 statement was protected by the anti-SLAPP statute because it was made in connection with an issue under consideration or review in an official proceeding. (§ 425.16, subd. (e)(2).) The burden then shifted to Leavitt to demonstrate a reasonable probability he would prevail on his claims against Perez, and he failed to meet this burden.

II. FACTUAL AND PROCEDURAL BACKGROUND

In June 2007, Leavitt was employed by the District as its supervisor of grounds maintenance and operations, while Perez was the assistant superintendent of personnel services for the District. On June 4, Jeremy Schaefermeyer and Jennifer Doan[4] submitted written complaints to the District alleging that Leavitt had engaged in inappropriate sexual behavior and had made inappropriate sexual remarks in the presence of them and

---

[3] *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194 (*Skelly*).

[4] Schaefermeyer was a permanent employee of the District, and Leavitt was his direct supervisor. Doan was working as a school bus driver for the District pursuant to a contract between the District and another school district.

others who worked for the District. Leavitt was placed on paid administrative leave, and an investigation ensued.

The investigation entailed, among other things, interviews with various witnesses, including Leavitt, Schaefermeyer, and Doan. According to Perez, the investigation revealed it was more likely than not that Leavitt had engaged in the alleged sexual misconduct. Perez informed Leavitt of this finding in a letter to him dated September 28, 2007, captioned "Notice of Intent to Recommend Dismissal and Statement of Charges." The September 28 letter included a statement of the charges against Leavitt, and informed him the District was considering recommending to its governing board that he be dismissed from his employment pending a *Skelly* hearing. The letter scheduled the *Skelly* hearing for October 5. The *Skelly* hearing was twice continued, and ultimately held on October 29.

According to Leavitt, the September 28 letter was incomplete because it did not contain a "Notice of Intent to Suspend Without Pay," a "Notice of Immediate Suspension Without Pay," or a copy of Board Policy (BP) 4213.1. Following his receipt of the September 28 letter, Leavitt repeatedly requested a complete set of the documents he needed in order to defend himself against the charges described in the letter; however, as of October 25, he had still not received a complete set of documents. Finally, on October 25, Leavitt went into Perez's District office and obtained a complete set of the documents.

According to Perez, Leavitt came into her office on October 25 in order to pick up a letter to him dated October 25, captioned "Amended Notice of Intent to Immediately Suspend Without Pay and Recommend Dismissal, and Statement of Charges." The October 25 letter informed Leavitt he was being suspended from his employment without pay effective immediately, pursuant to District Administrative Regulation (AR) 4128 and pending the District's "final determination" whether to recommend his dismissal following the *Skelly* hearing. The letter included a copy of AR 4128.

According to Leavitt, when he met with Perez in her District office on October 25, she "loudly stated that [he] would no longer be on paid administrative leave as of November 1, 2007."[5] Leavitt and Perez agree that only one other individual was present when Perez told Leavitt he was being placed on unpaid leave; however, they disagree who that person was. Perez claims Jamica Brazell, who she describes as the "Confidential Administrative Assistant" in the District's department of personnel services, was the only other person who was present, and Brazell was there to "witness the instructions" Perez gave to Leavitt. Brazell confirms Perez's account. Leavitt claims Perez made the statement in the presence of Mary Dean Lohman, not Brazell. Leavitt does not explain who Lohman was, however, or whether she was a District employee

[5] Perez acknowledges that on October 25 she told Leavitt he was being placed on unpaid leave; however, she claims she told Leavitt he was being placed on unpaid leave effective immediately, rather than effective November 1 as Leavitt claims. The October 25 letter, which Leavitt acknowledges receiving, stated that Leavitt was being immediately suspended without pay effective immediately and pending the *Skelly* hearing. In any event, the date Leavitt was placed on unpaid leave is not germane to the issues on this appeal.

who was obliged not to reveal to others what Perez said to Leavitt, including Perez's statement that Leavitt was being placed on unpaid leave.

On October 28, Leavitt, through his attorneys, submitted a written response to the charges. The October 29 *Skelly* hearing was conducted based solely on documents submitted by the parties. On November 9, Leavitt received a letter dated November 8, captioned "Notice of Immediate Suspension Without Pay, Recommendation for Dismissal, and Statement of Charges." This letter expressly notified Leavitt he was being suspended without pay effective immediately, and that the District had made a final determination to recommend to its governing board that he be dismissed from his employment. Leavitt was dismissed effective November 14.[6]

III. DISCUSSION

A. *General Principles Governing Anti-SLAPP Motions*

A SLAPP suit—an acronym for "strategic lawsuit against public participation"—is brought primarily to chill or punish a party's exercise of his or her constitutional rights of free speech or to petition the government for redress of grievances. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055; § 425.16, subd. (a).) The purpose of section 425.16—known as the anti-SLAPP statue—is to prevent the chilling of "continued participation in matters of public significance" through SLAPP suits. (§ 425.16, subd. (a); *Dyer v.*

---

[6] Leavitt argues the District failed to properly advise him of his right to appeal the District's dismissal recommendation and that the District also violated BP 4213.1 in refusing to allow him 10 days to appeal its dismissal recommendation. These claims are not germane to the issues on this appeal, however.

Childress (2007) 147 Cal.App.4th 1273, 1278 (*Dyer*).) To this end, the Legislature has declared that the anti-SLAPP statute is to be broadly construed. (§ 425.16, subd. (a).)

The anti-SLAPP statute allows a party-defendant to bring a special motion to strike a SLAPP suit, or any "cause of action . . . arising from any act . . . in furtherance of the person's right of petition or free speech . . . ." (§ 425.16, subd. (b)(1).) Section 425.16, subdivision (e) describes four categories of conduct that constitute acts "in furtherance of a person's right of petition or free speech . . . ." (§ 425.16, subd. (e)(1)-(4).) The second category, in issue here, protects "any written or oral statement or writing made *in connection with an issue under consideration or review* by a legislative, executive, or judicial body, or any other official proceeding authorized by law[.]" (§ 425.16, subd. (e)(2), italics added.)[7]

Section 425.16 posits a two-step process for determining whether a cause of action constitutes a SLAPP. (§ 425.16, subd. (b)(1); *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) First, the defendant must make an initial or threshold showing that the cause of action in issue arises from protected activity. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) The defendant meets this burden by showing that the act

---

[7] The first category differs from the second in that the first protects statements or writings "made *before* a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law[.]" (§ 425.16, subd. (e)(1), italics added.) The third and forth categories involve statements or writings made "in a place open to the public or a public forum in connection with an issue of public interest" (*id.*, subd. (e)(3)), and "conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest" (*id.*, subd. (e)(4)).

underlying the cause of action fits one of the four categories of statements or conduct described in subdivision (e) of the statute. (*Navellier v. Sletten, supra,* at p. 88.)

If the defendant meets its burden, the burden shifts to the plaintiff to show that the plaintiff has "a probability of prevailing on the claim." (*Equilon Enterprises v. Consumer Cause, Inc., supra,* 29 Cal.4th at p. 67; § 425.16, subd. (b)(1).) In order to show a probability of prevailing on the claim, the plaintiff "'"must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." [Citations.]' [Citation.]" (*Rusheen v. Cohen, supra,* 37 Cal.4th at p. 1056.)

"Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." (*Navellier v. Sletten, supra,* 29 Cal.4th at p. 89.)

An order granting or denying a special motion to strike is appealable under section 904.1. (§ 425.16, subd. (i).) In reviewing an order granting or denying a special motion to strike, this court applies the independent, de novo standard of review. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 1.) We are obliged to consider "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (§ 425.16, subd. (b)(2).) "However, we neither 'weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant's evidence only to

determine if it has defeated that submitted by the plaintiff as a matter of law.' [Citation.]" (*Soukup v. Law Offices of Herbert Hafif, supra*, at p. 269, fn. 1.)

B. *Leavitt's Arguments*

Leavitt claims the special motion to strike his two causes of action against Perez for defamation and invasion of privacy was erroneously granted. He first argues Perez failed to meet her burden of showing that her October 25 statement that he was being placed on unpaid administrative leave—which he concedes is the sole basis of his two causes of action against her—constituted protected activity. (§ 425.16, subd. (e).) He further argues that even if Perez met her burden, he then met his burden of demonstrating a probability he would prevail on his causes of action. We first consider whether Perez met her initial burden, and conclude she did. We then address whether Leavitt met his burden, and conclude he did not.

1. Perez's Statement Was Protected by Section 425.16, Subdivision (e)(2)

Regarding the first prong of the two-step section 425.16 analysis, Leavitt argues that Perez's October 25 statement that he would be placed on unpaid administrative leave did not involve a public issue and was not a matter of public interest described in subdivision (e) of section 425.16. Rather, he argues, the statement involved a "private matter of a sensitive nature," namely, his employment status and, as such, was not protected by section 425.16, including any part of subdivision (e).

Though we agree the October 25 statement did not involve a public issue or a matter of public interest, we conclude it was a statement described in subdivision (e)(2)

of section 425.16. Accordingly, Perez was not required to show the statement involved a public issue or a matter of public interest.

As noted, subdivision (e)(2) of section 425.16 defines an "'act in furtherance of a person's right of petition or free speech . . . in connection with a public issue'" as including "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law[.]" (§ 425.16, subd. (e)(2).) Similarly, subdivision (e)(1) protects statements "*made before*" any "official proceeding authorized by law," including any legislative, executive, or judicial proceeding. (*Id*., subd. (e)(1), italics added.)

When a cause of action is based on a statement described in section 425.16, subdivision (e)(1) or (2), the defendant is not required to show that the statement involved a public issue or a matter of public interest. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1116-1117, 1123 (*Briggs*).) This is because, in drafting subdivision (e)(1) and (2), the Legislature "'*equated* a public issue with the authorized official proceeding to which [the statement] connects.'" (*Briggs, supra,* at p. 1117, quoting *Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1047.)

As explained in *Briggs*, section 425.16, subdivision (e)(1) and (2) were designed to "'safeguard free speech and petition conduct aimed at advancing self government, as well as conduct aimed at more mundane pursuits. Under the plain terms of the statute it is the context or setting itself that make the issue a public issue: all that matters is that

the First Amendment activity take place in an official proceeding or be made in connection with an issue being reviewed by an official proceeding. . . .'" (*Briggs, supra,* 19 Cal.4th at p. 1116, quoting *Braun v. Chronicle Publishing Co., supra,* 52 Cal.App.4that p. 1047.) Thus, a statement described in subdivision (e)(1) or (2) is *presumed* to involve a public issue or a matter of public interest.

It is also settled that statutory hearing procedures constitute "official proceeding[s] authorized by law" for purposes of section 425.16, subdivision (e)(1) and (2). (E.g., *Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 199 [hospital peer review procedure qualified as "'official proceeding authorized by law'" for purposes of Code Civ. Proc., § 425.16, subd. (e)(2) because it was required by Bus. & Prof. Code, § 805 et seq.]; *Vergos v. McNeal* (2007) 146 Cal.App.4th 1387, 1395 (*Vergos*) [communicative conduct by manager/hearing officer in denying University employee's administrative grievances were made in connection with "'official proceeding authorized by law'" for purposes of Code Civ. Proc., § 425.16, subd. (e)(2)].)

In granting the anti-SLAPP motion in favor of Perez, the trial court concluded that her October 25 statement was a communicative statement made in connection with an issue under consideration or review in an official proceeding authorized by law, namely, the District's employment termination procedures and, as such, was protected by section 425.16, subdivision (e)(2). In reaching its conclusion, the trial court relied principally on *Vergos*. Indeed, *Vergos* is closely on point.

In *Vergos*, the plaintiff, Randy Vergos, an employee of the University of California at Davis, filed administrative grievances alleging he had been sexually harassed by his supervisor, Allen Tollefson. (*Vergos, supra,* 146 Cal.App.4th at p. 1391.) The defendant, Julie McNeal, was Tollefson's supervisor and the hearing officer and managing agent for the Regents of University of California (the Regents) in the matter of Vergos's grievances. (*Ibid*.) McNeal denied the grievances and wrote to Vergos that it was "'more likely'" the conduct he had complained of did not occur. (*Ibid*.) She also refused to take any action concerning his grievances. (*Ibid*.) Vergos later sued McNeal in her individual capacity for sexual harassment and civil rights violations. (*Id*. at pp. 1390-1392.) McNeal filed a special motion to strike the civil rights claims. (*Id*. at p. 1392.)

The court in *Vergos* concluded that McNeal's statements to Vergos were made "'in connection with an issue under consideration or review'" in an "'official proceeding authorized by law,'" and were therefore protected by section 425.16, subdivision (e)(2). (*Vergos, supra,* 146 Cal.App.4th at pp. 1394-1396, 1399.) After noting that McNeal had reviewed Vergos's grievances pursuant to the Regents' Personnel Policies for Staff Members or PPSM, which the Regents had established pursuant to their quasi-judicial powers as a constitutional entity (*id*. at pp. 1392, 1396), the court observed that the gravamen of Vergos's civil rights claims against McNeal was her "communicative conduct in denying [his] grievances" (*id*. at p. 1397). The court went on to state that "the

purpose of section 425.16 is best served by applying it to all individual participants in the official proceeding, including the decision maker." (*Id*. at p. 1399.)

Here, the gravamen of Leavitt's defamation and invasion of privacy claims against Perez was her October 25 statement that he would be placed on unpaid administrative leave. It is clear, however, that Perez made the statement "in connection with an issue under consideration or review" in an "official proceeding authorized by law" (§ 425.16, subd. (e)(2)), namely, the then-pending proceedings to terminate Leavitt's employment, which were authorized by Education Code section 45113.[8] Indeed, the statement directly concerned Leavitt's potential dismissal, which was an issue then under consideration in the statutorily-authorized administrative proceedings before the District. As such, the statement was protected by Code of Civil Procedure section 425.16, subdivision (e)(2).

Relying on *Dyer, supra,* 147 Cal.App.4th at pages 1282 and 1283, Leavitt argues his employment status was not a matter of public interest, but a private matter of a sensitive nature. Leavitt's reliance on *Dyer* is misplaced, however, because *Dyer* did not involve a statement described in section 425.16, subdivision (e)(1) or (2).

In *Dyer*, the plaintiff, Troy Dyer, sued several defendants, including Universal City Studios, for defamation and false light invasion of privacy on the grounds he had

---

[8] Education Code section 45113 provides that the governing board of a school district "shall prescribe written rules and regulations, governing the personnel management of the classified service . . ." and "shall adopt rules of procedure for disciplinary proceedings which shall contain a provision for informing the employee by written notice of the specific charges against him or her, a statement of the employee's right to a hearing on those charges, and the time within which the hearing may be requested . . . ." (Ed. Code, § 45113, subds. (a), (c).)

been portrayed in an unflattering light in the movie Reality Bites, which addressed issues facing Generation X in the 1990's. (*Dyer, supra,* 147 Cal.App.4th at pp. 1276-1277.) The *Dyer* court affirmed the trial court's denial of the defendants' special motion to strike, reasoning that "the representation of Troy Dyer [in the movie] as a rebellious slacker is not a matter of public interest and there is no discernable public interest in Dyer's persona. Although Reality Bites may address topics of widespread public interest, defendants are unable to draw any connection between those topics and Dyer's defamation and false light claims." (*Id*. at p. 1280.)

Leavitt draws the same distinction concerning the matter of his employment status. He argues his employment status was not a matter of public interest, just as Troy Dyer's persona was not a matter of public interest. Notably, however, the court in *Dyer* was analyzing whether the movie's unflattering portrayal of Troy Dyer constituted conduct protected by section 425.16, subdivision (e)(4), that is, "conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e)(4); *Dyer, supra,* 147 Cal.App.4th at p. 1278.) *Dyer* did not address subdivision (e)(1) or (2), because the portrayal of Troy Dyer in the movie did not involve a statement made before or in connection with an issue under consideration or review in an official proceeding authorized by law. (§ 425.16, subd. (e)(1), (2).)

Just as section 425.16, subdivision (e)(1) or (2) was not in issue in *Dyer*, subdivision (e)(4) is not in issue in the present case. Perez only had to show her October

25 statement was protected by one prong of subdivision (e), and she met this burden by showing it was protected by subdivision (e)(2). As discussed, when a statement is protected by subdivision (e)(2), there is no need to show it involved a matter of public interest. (*Briggs, supra,* 19 Cal.4th at pp. 1116-1117, 1123.)[9]

2. Leavitt Failed to Demonstrate a Probability He Would Prevail on His Claims

We next consider whether Leavitt met his burden of showing a probability he would prevail at trial on the merits of his defamation and invasion of privacy claims. (*Navellier v. Sletten, supra,* 29 Cal.4th at p. 88; § 425.16, subd. (b)(1).) In order to meet this burden, Leavitt had to show his complaint was "'"both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." [Citations.]' [Citation.]" (*Rusheen v. Cohen, supra,* 37 Cal.4th at p. 1056.)

Like evidentiary showings in summary judgment motions, the evidence presented in support of the plaintiff's complaint or causes of action alleged in the complaint must be admissible. (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 654, disapproved on other grounds in *Equilon Enterprises v. Consumer Cause, Inc., supra,* 29 Cal.4th at p. 68, fn. 5.) The trial court does not weigh the evidence. (*Mattel, Inc. v. Luce,*

---

[9] Leavitt also relies on *Dyer, supra,* 147 Cal.App.4th at pages 1282 and 1283, where the court, citing *Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 924, observed that "cases involving disputes in the workplace do not involve matters of public interest as defined in section 425.16, even though the issue may involve free speech." The court's statement must be understood in the context in which it was made—subdivision (e)(4)—not subdivision (e)(1) or (2).

Forward, Hamilton & Scripps (2002) 99 Cal.App.4th 1179, 1188.) Our review is de novo. (*Vergos, supra,* 146 Cal.App.4th at p. 1401.)

In his first amended complaint, Leavitt sued Perez in his fourth and fifth causes of action, respectively, for defamation and invasion of privacy through the publication of a private fact. Both claims were based solely on Perez's statement to Leavitt that he was being placed on unpaid administrative leave from his employment position with the District. As discussed, the statement was made in Perez's District office on October 25 and in the presence of one other individual, while Leavitt was there to retrieve some documents concerning the District's then-pending proceedings to determine whether to recommend his dismissal.

The tort of defamation involves the publication of a statement of fact that is *false*, unprivileged, and that has a natural tendency to injure or which causes special damage. (*Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645; Civ. Code, § 46.) The publication must be made to at least one third person who understands the defamatory meaning of the statement. (*Smith v. Maldonado, supra,* at p. 645; Civ. Code, § 46.) Leavitt failed to make the required prima facie showing required for his defamation claim, simply because the evidence presented on the present motion showed that the statement that Leavitt was being placed on unpaid administrative leave was a *true* statement of fact.

Leavitt has also failed to make the required prima facie showing on his cause of action against Perez for invasion of privacy through publication of a private fact. In order to prevail on this claim, a plaintiff is required to show: "'"(1) public disclosure (2) of a

private fact (3) which would be offensive and objectionable to the reasonable person and (4) which is not of legitimate public concern."'" (*Taus v. Loftus* (2007) 40 Cal.4th 683, 717; *Shulman v. Group W Productions, Inc.* (1998) 18 Cal.4th 200, 214; *Morrow v. Los Angeles Unified School Dist.* (2007) 149 Cal.App.4th 1424, 1440.)

First, Leavitt presented no evidence that the challenged statement—the fact he was being placed on unpaid administrative leave—was disclosed to the public. The tort of public disclosure of private facts requires a showing that a private fact was communicated to the public in general or a large number of persons, as opposed to only one individual or a few. (*Kinsey v. Macur* (1980) 107 Cal.App.3d 265, 270-271; *Porten v. University of San Francisco* (1976) 64 Cal.App.3d 825, 828-829; *Schwartz v. Thiele* (1966) 242 Cal.App.2d 799, 805.)

In his complaint, Leavitt alleged the statement was "heard by District employees, including Perez'[s] administrative assistant, and several other persons whose identities are not presently known . . . ." This bare allegation is itself insufficient to support Leavitt's claim, and is unsupported by any admissible evidence. In his declaration, Leavitt averred only that the statement was made in the presence of *one* other person, Mary Dean Lohman. The disclosure of the statement to one person is insufficient to show it was disclosed to the public or to a large number of persons—assuming the statement was a private fact.

IV. DISPOSITION

The order granting the special motion to strike Leavitt's fourth and fifth causes of action against Perez for, respectively, defamation and invasion of privacy (§ 425.16), and the ensuing judgment entered in favor of Perez are affirmed. Perez shall recover her costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ King
J.

We concur:

/s/ Ramirez
P.J.

/s/ McKinster
J.